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SALLQUIST, DRUMMOND & O'CONNOR, P.C.

ATTORNEYS AT LAW

TEMPE OFFICE

4500 S. LAKESHORE DRIVE

SUITE 339

TEMPE, ARIZONA 85282

RICHARD L. SALLQUIST

PHONE (480) 839-5202  
FACSIMILE (480) 345-0412  
E-MAIL [dick@sd-law.com](mailto:dick@sd-law.com)

November 19, 2007

**HAND DELIVERY**

Shauna Lee-Rice  
Arizona Corporation Commission  
Docket Control  
1200 W. Washington  
Phoenix, AZ 85007

Re: Willow Springs Utilities LLC; Application for a Certificate of Convenience and Necessity; Docket No. WS-20432A-05-0874; Decision No. 68963, Compliance Filing

Dear Ms Lee-Rice:

Although the Subject Decision did not require the filing of the County Franchise(s) for this newly Certificated Company, in prior Compliance Filings the Company indicated that it would file the Franchise(s) upon receipt.

Attached hereto are fifteen (15) copies each of the Water Franchise and the Wastewater Franchise as issued to the Company by Pinal County on September 19, 2007.

In the event you have any questions regarding these matters, please do not hesitate to call.

Sincerely,

Richard L. Sallquist

Enclosures

cc: Alex Argenta (w/o enclosure)  
Kevin Tarbox (w/o enclosure)  
Patrick Murphy (w/o enclosure)

Arizona Corporation Commission

**DOCKETED**

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18



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

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DATE/TIME: 11/01/07 1234  
FEE: \$0.00  
PAGES: 12  
FEE NUMBER: 2007-121689

**Creation Of The Willow Springs Utilities, L.L.C. Water Company Franchise**

**WHEREAS**, Willow Springs Utilities, L.L.C., an Arizona limited liability company, duly authorized to conduct business in the State of Arizona, has filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for a new public utility franchise for the purpose of constructing, operating and maintaining water lines and related appurtenances along, under and across the public streets, alleys and highways, except federal and state highways, (hereafter "Public Rights-of-Way") within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Application").

**WHEREAS**, upon filing of the Application for the public utility franchise, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the public utility franchise to be published in a newspaper of general circulation, in Pinal County, Arizona, stating the time and place for consideration of the Application was set for 9:30 a.m. on September 19, 2007, at the Pinal County Board of Supervisors' Hearing Room, Administration Building A, Florence, Arizona.

**WHEREAS**, said Application having come on regularly for hearing at 9:30 a.m. on September 19, 2007; and it appearing from the affidavit of the publisher of the Florence Reminder and Blade Tribune and San Manuel Miner, that due and regular notice of said time and place set for the consideration of such action has been published for at least once a week for three consecutive weeks prior to said hearing date, to-wit: in the issues of the Florence Reminder and Blade Tribune, published on August 30, 2007, September 6, 2007, September 13, 2007 and the San Manuel Miner published on August 29, 2007, September 5, 2007, September 12, 2007; and the matter being called for hearing at 9:30 a.m., on September 19, 2007 and an opportunity having been given to all interested parties to be heard.

**WHEREAS**, the Board of Supervisors of Pinal County has the power and authority to create a water franchise under Arizona Revised Statutes §40-283, as well as other applicable sections.

**NOW, THEREFORE,**

Willow Springs Water Franchise

## **Section 1: DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

- A. County: Pinal County, Arizona.
- B. Board: Board of Supervisors of Pinal County, Arizona.
- C. Grantor: Pinal County, by and through its Board of Supervisors.
- D. Grantee: Willow Springs Utilities, L.L.C., an Arizona limited liability company, its successors and assigns.
- E. Grantee's Facilities: Water structures, equipment, lines, plants and related appurtenances.

## **Section 2: GRANT**

A. Grantor, on September 19, 2007, hereby grants to Grantee, for a period of twenty-five years, this new public utility franchise (hereinafter "Franchise") for the purpose of constructing, operating and maintaining water lines and related appurtenances along, under and across Public Rights-of-Way, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Application (hereinafter "Franchise Area").

B. Nonexclusive Franchise.

(1) The Franchise granted hereby shall not be exclusive and shall not restrict in any manner the right of County in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Arizona. Nothing herein shall be construed to prevent County from granting other like or similar franchises to any other person, firm or corporation. County retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm, corporation or other companies, franchise rights and privileges to be exercised in and upon its Public Rights-of-Way and public places, and such of the same and parts thereof as County may deem best or choose to allow, permit, give or grant.

(2) Nothing herein shall be construed to prevent County and its proper authorities from constructing and installing water lines, sewers, gutters, or improvements to its public highways, streets and alleys, and for that purpose, to require Grantee at Grantee's own expense to remove Grantee's Facilities to conform thereto and facilitate the same.

(3) Grantor makes no assurances that through its grant of this Franchise Agreement to Grantee that Grantor will endorse, support, or otherwise encourage approval of Grantee's 208 Plan Amendment, Certificate of Need and Necessity, permit requests, zoning, or any other approval from a governmental or regulatory agency.

C. Reservation of Rights.

(1) County reserves the right to alter and amend the Franchise at any time and in any manner necessary for the safety or welfare of the public or to protect the public interests, and County reserves the right to impose at any time restrictions and limitations upon the use of the Public Rights-of-Way as County deems best for the public safety or welfare.

(2) County expressly reserves the right, after thirty (30) days written notice to Grantee, to modify, amend, alter, change or eliminate any of the provisions of the Franchise which may become obsolete or impractical; and to impose such additional conditions upon Grantee as may be just and reasonable, such conditions to be those deemed necessary for the purpose of insuring adequate service to the public; provided however, County shall not modify, amend, alter, change or eliminate any of said provisions until after thirty (30) days and a public hearing, if such is legally required or requested by Grantee.

**Section 3: RENEWAL/SUBSEQUENT APPLICATION/REMOVAL OF SYSTEM**

A. The Franchise herein granted shall expire on September 19, 2032; and upon its termination, Grantee shall cease to exercise under the terms of the Franchise the privileges herein granted. In the event Grantee desires a renewal of the Franchise herein granted, or a new franchise for a subsequent period, Grantee shall apply to and open negotiations with County for that purpose at least six (6) months before the expiration of the Franchise herein granted; but nothing herein shall be construed to bind County to grant such renewal or subsequent franchise.

B. Upon termination of the Franchise, Grantee shall remove Grantee's Facilities from the Public Rights-of-Way within the Franchise Area and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, County may deem any property not removed as having been abandoned.

**Section 4: REGULATION**

Grantee shall be subject to reasonable regulations for the maintenance by Grantee of such portion of the Public Rights-of-Way altered, damaged or destroyed by Grantee, its agents,

employees or contractors, in exercising the privileges granted by the Franchise, including, but not limited to provisions for repair as set forth in Section 9(B) herein.

## **Section 5: CONSTRUCTION, INSTALLATION AND REPAIRS**

A. Before beginning any construction for installation of Grantee's Facilities, Grantee shall submit a plan of proposed construction to the Pinal County Engineer and shall not commence any construction until the plan of construction is approved by the County Engineer or his designate.

B. All work performed by Grantee, its agents, employees or contractors, under the Franchise shall be done in the manner prescribed by County and subject to the supervision of County, and in strict compliance with all laws, ordinances, rules and regulations of federal, state and local governments.

C. No construction, reconstruction, repair, or relocation under the Franchise shall be commenced until written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, Public Rights-of-Way and for the proper restoration of such structures, Public Rights-of-Way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

D. No construction under the Franchise by Grantee shall impose upon County the duty to maintain any public rights-of-way unless County accepts said public street, alley, highway, or right of way into the county maintenance system as provided by law.

## **Section 6: INSPECTION**

County shall, if it deems it necessary, have the right to inspect the construction, operation and maintenance of Grantee's Facilities to insure the proper performance of the terms of the Franchise granted herein.

## **Section 7: SUFFICIENCY, LOCATION AND MAINTENANCE**

All of Grantee's Facilities shall be in all respects adequate, efficient, substantial and permanent in design and workmanship, and shall be so located, erected and maintained in good order and repair so as not to interfere with the use, enjoyment or safety of the Public Rights-of-Way.

## **Section 8: EXPANSION**

Grantee may from time to time, during the term of the Franchise make such enlargements and extensions of its wastewater system as are necessary to adequately provide for the requirements of County and the inhabitants of the Franchise Area; provided that nothing herein shall compel Grantee to expand or enlarge its system beyond the economic and operating limits thereof. Such enlargements and extensions shall be made in accordance with County rules and regulations.

## **Section 9: RELOCATION; REPAIR**

A. During the term of the Franchise, if County or any qualified authority having jurisdiction in the Franchise Area alters, repairs, improves, or changes the grade of, any Public Rights-of-Way in the Franchise Area, then and in such event, Grantee, at its own expense, shall promptly make such changes in the location, structure or alignment of its water lines and related appurtenances as the County Engineer or his/her designee may deem necessary as provided in Section 9(B).

B. Within sixty (60) days after receiving written notice from County of needed changes or corrections in Grantee's Facilities, and upon the failure of Grantee to make such changes or corrections as set forth in Section 9(A) or to correct any damage to any Public Rights-of-Way within the Franchise Area caused directly or indirectly by Grantee, its agents, employees or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Grantee. In the event that any changes, corrections or repairs are deemed an emergency by County, Grantee, upon receipt of notice of such an emergency, shall make such changes, corrections or repairs deemed necessary by County to provide for health and safety concerns. In the event that Grantee does not make the necessary changes, corrections or repairs within a reasonable period of time, County may make, or cause such changes, corrections or repairs to be made at the expense of Grantee. Any expenses incurred for such changes, corrections or repairs shall be due and payable within thirty (30) days of written demand by County to Grantee.

## **Section 10: LIABILITY**

A. If any Public Rights-of-Way, bridge, sidewalk, public place, or other public facility should be disturbed, altered, damaged or destroyed by Grantee, its agents, employees or contractors, in the construction, design, installation, operation and maintenance of Grantee's Facilities under the Franchise, the same shall be promptly repaired, reconstructed, replaced or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

B. Grantee shall be responsible to every owner of property which shall be injured by the work of construction, installation, operation or maintenance of Grantee's Facilities under the Franchise, all physical damage which shall be done to such injured property through any act or omission of Grantee, its agents, employees or contractors, arising out of said construction, installation, operation or maintenance.

C. It is a condition of the Franchise that County shall not and does not by reason of the Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property.

### **Section 11: INDEMNIFICATION**

Grantee by its acceptance of the Franchise agrees that throughout the entire term of this Franchise, Grantee, at its sole cost and expense, shall indemnify, defend, save and hold harmless Pinal County, its elected officers, employees and agents from any and all lawsuits, judgments and claims for injury, death and damage to persons and property, both real and personal, caused in whole or in part by the construction, design, installation, operation or maintenance of Grantees Facilities by Grantee, its agents, employees or contractors, within the Franchise Area. Indemnified expenses shall include, but not be limited to, litigation and arbitration expenses, and attorneys' fees.

### **Section 12: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE OF FRANCHISE**

The Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty (30) days after the date this Franchise is approved by County. This Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

### **Section 13: LIMITS ON GRANTEE'S RECOURSE**

A. Grantee by its acceptance of the Franchise acknowledges such acceptance relies upon Grantee's own investigation and understanding of the power and authority of the County to grant this Franchise. Grantee by its acceptance of the Franchise accepts the validity of the terms and conditions of the Franchise in their entirety and agrees it will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Franchise as unreasonable, arbitrary or void, or that County did not have the authority to impose such term or condition.

B. Grantee by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein.

Grantee by its acceptance of the Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Franchise.

C. Grantee by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. The Board's decision concerning its selection and awarding of the Franchise shall be final.

#### **Section 14: FAILURE TO ENFORCE FRANCHISE**

Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

#### **Section 15: COMPLIANCE WITH THE LAW**

Grantee shall at all times, conduct its business under the Franchise in accordance with all federal, state and local laws, rules and regulations, as amended, including any future amendments thereto as may, from time to time, be adopted.

#### **Section 16: INTERPRETATION/GOVERNING LAW**

The interpretation and performance of the Franchise and of the general terms and conditions shall be in accordance with and governed by the laws of the State of Arizona.

#### **Section 17: VENUE**

Exclusive venue for any legal action to enforce the provisions, terms and conditions of the Franchise shall be the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona.

#### **Section 18: SEVERABILITY**

If any section, provision, term or covenant or any portion of any section, provision, term or covenant of the Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having



jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term or covenant or the remaining sections, provisions, terms or covenants of the Franchise, all of which shall remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

#### **Section 19: FORFEITURE**

A. If Grantee fails to comply with any of the provisions of this Franchise or defaults in any of its obligations hereunder, except for causes beyond the reasonable control of Grantee; and shall fail within thirty (30) days after written notice from County to commence, and within a reasonable time and not longer than sixty (60) days, complete the correction of such default or noncompliance, County shall have the right to revoke this Franchise and all rights of Grantee hereunder. In the event Grantee makes a general assignment or general arrangement for the benefit of creditors; or a trustee or receiver is appointed to take possession of substantially all of Grantee's Facilities within the Franchise Area or of Grantee's interest in this Franchise, where possession is not restored to Grantee within thirty (30) days; or Grantee's Facilities within the Franchise Area are subject to an attachment, execution or other seizure of substantially all of the Grantee's Facilities within the Franchise Area or this Franchise, where such seizure is not discharged within thirty (30) days, County may declare this Franchise, and any expansion hereto, forfeited and terminated.

B. Nothing herein contained shall limit or restrict any other legal rights that County may possess arising from such violations.

#### **Section 20: REVOCATION OF FRANCHISE**

The Franchise may after due notice and hearing, be revoked by County for any of the following reasons:

- A. For false or misleading statements in, or material omissions from the application for and the hearing on the granting of the Franchise.
- B. For any transfer or assignment of the Franchise or control thereof without County's written consent.
- C. For failure to comply with any of the terms and conditions of the Franchise.

#### **Section 21: ASSIGNMENT/TRANSFER**

Grantee shall not assign or transfer any interest in the Franchise without the prior written consent of Grantor. Grantor shall not unreasonably withhold its consent to a proposed transfer.

## **Section 22: NOTICE**

Notices required under the Franchise shall be delivered or sent by certified mail, postage prepaid to:

Grantor:

Clerk of the Pinal County Board of Supervisors  
P.O. Box 827  
31 N. Pinal  
Florence, Arizona 85232

Grantee:

Willow Springs Utilities, L.L.C.  
1600 East Hanley Blvd., Suite 128  
Oro Valley, Arizona 85737

The delivery or mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given at the time of delivery. Either party may change its address under this section by written notice to the other party.

## **Section 23: REMEDIES**

Rights and remedies reserved to the parties by the Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of the Franchise and a waiver thereof at any time shall not affect any other reservation of rights or remedies.

## **Section 24: RIGHT OF INTERVENTION**

County hereby reserves to itself, and Grantee hereby grants to County, the right to intervene in any suit, action or proceeding involving any provision in the Franchise.

## **Section 25: BOOKS AND RECORDS**

Grantee shall maintain books and records that identify all of Grantee's underground facilities by type and location within the Franchise Area. Grantee shall make such books and records available to County upon County's request and without cost to County.

**Section 26: AD VALOREM TAXES**

Grantee shall pay its ad valorem taxes before they become delinquent.

**IN WITNESS WHEREOF**, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and caused its official seal to be affixed on 9-19-07.



PINAL COUNTY BOARD OF SUPERVISORS

David Snider  
David Snider, Chairman

ATTEST:

Sheri Cluff  
Sheri Cluff, Clerk of the Board

APPROVED AS TO FORM:

JAMES P. WALSH  
PINAL COUNTY ATTORNEY

Rick Husk  
Rick Husk, Deputy County Attorney

**Exhibit A**

**FRANCHISE AREA:**

**Sections 8, 9, 14, 15, 22, 23, 25, 26 and 27, all within Township 8 South, Range 13 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;**

**Sections 20, 29 and 30, Township 8 South, Range 14 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;**

Exhibit B

ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Willow Springs Utilities, L.L.C., an Arizona limited liability company, does hereby accept the September 19, 2007 grant of a new public utility franchise from Pinal County, Arizona, (hereinafter "Franchise"), to construct, operate, and maintain water lines and related fixtures along, under and across present and future Public Rights-of-Way, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public utility franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Willow Springs Utilities, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ARIZONA       )  
                                  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, \_\_\_\_\_ of Willow Springs Utilities, L.L.C., an Arizona limited liability company, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTL

When recorded mail to:

Clerk of the Board Office  
P.O. Box 827  
Florence, Arizona 85232

DATE/TIME: 11/01/07 1234

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2007-121690

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(The above space reserved for recording information)

**CAPTION HEADING**

Acceptance form from Willow Springs Utility Company, L.L.C. for water utility franchise

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**DO NOT DISCARD THIS PAGE.** THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT.  
THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT HAND CORNER  
IS THE PERMANENT REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY  
RECORDER'S OFFICE.

## ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Willow Springs Utilities, L.L.C., an Arizona limited liability company, does hereby accept the September 19, 2007 grant of a new public utility franchise from Pinal County, Arizona, (hereinafter "Franchise"), to construct, operate, and maintain water lines and related fixtures along, under and across present and future Public Rights-of-Way, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public utility franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this 25<sup>th</sup> day of September, 2007.

Willow Springs Utilities, L.L.C.

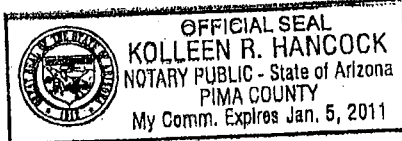
By: Kevin Taiboy

Title: General Manager

STATE OF ARIZONA )

County of Pima )

ss.



The foregoing instrument was acknowledged before me this 25 day of September 2007, by Kevin Taiboy, General Manager of Willow Springs Utilities, L.L.C., an Arizona limited liability company, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

Kolleen R Hancock  
Notary Public

My Commission Expires:

11/5/2011

12



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTLE

When recorded mail to:

Clerk of the Board  
P.O. Box 827  
Florence, Arizona 85232

DATE/TIME: 11/01/07 1234  
FEE: \$0.00  
PAGES: 12  
FEE NUMBER: 2007-121687

**Creation Of The Willow Springs Utility Company, L.L.C. Wastewater Franchise**

**WHEREAS**, Willow Springs Utility Company, L.L.C., an Arizona limited liability company, duly authorized to conduct business in the State of Arizona, has filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for a new public utility franchise for the purpose of constructing, operating and maintaining wastewater lines and related appurtenances along, under and across the public streets, alleys and highways, except federal and state highways, (hereinafter "public rights of way") within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Application"), and

**WHEREAS**, upon filing of the Application for the public utility franchise, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the public utility franchise to be published in a newspaper of general circulation, in Pinal County, Arizona, stating the time and place for consideration of the Application was set for 9:30 a.m. on September 19, 2007, at the Pinal County Board of Supervisors' Hearing Room, Administration Building A, Florence, Arizona, and

**WHEREAS**, said Application having come on regularly for hearing at 9:30 a.m. on September 19, 2007; and it appearing from the affidavit of the publisher of the Florence Reminder and Blade Tribune, and the San Manuel Miner, that due and regular notice of said time and place set for the consideration of such action has been published for at least once a week for three consecutive weeks prior to said hearing date, to-wit: in the issues of the Florence Reminder and Blade Tribune, published on August 30, 2007, September 6, 2007, September 13, 2007; and the San Manuel Miner, published on August 29, 2007, September 5, 2007, September 12, 2007; and the matter being called for hearing at 9:30 a.m., on September 19, 2007 and an opportunity having been given to all interested parties to be heard, and

**WHEREAS**, the Board of Supervisors of Pinal County has the power to create a wastewater franchise pursuant to Arizona Revised Statute §40-283, and other applicable sections.

**NOW, THEREFORE,**

Willow Springs Wastewater Franchise



## **Section 1: DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

- A. County: Pinal County, Arizona.
- B. Board: Board of Supervisors of Pinal County, Arizona.
- C. Grantor: Pinal County, by and through its Board of Supervisors.
- D. Grantee: Willow Springs Utility Company, L.L.C., an Arizona limited liability company, its successors and assigns.
- E. Grantee's Facilities: Wastewater structures, equipment, lines, plants and related appurtenances.

## **Section 2: GRANT**

A. Grantor, on September 19, 2007, hereby grants to Grantee, for a period of twenty-five years, this new public utility franchise (hereinafter "Franchise") for the purpose of constructing, operating and maintaining wastewater lines and related appurtenances along, under and across public rights of way, except federal and state highways, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Application (hereinafter "Franchise Area").

B. Nonexclusive Franchise.

(1) The Franchise granted hereby shall not be exclusive and shall not restrict in any manner the right of County in the exercise of any regulatory power which it now has or which may hereafter be authorized or permitted by the laws of the State of Arizona. Nothing herein shall be construed to prevent County from granting other like or similar franchises to any other person, firm or corporation. County retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm, corporation or other companies, franchise rights and privileges to be exercised in and upon its public rights of way and public places, and parts thereof as County may deem best or choose to allow, permit, give or grant.

(2) Nothing herein shall be construed to prevent County and its proper authorities from constructing and installing water lines, sewers, gutters, or improvements to its public highways, streets and alleys, and for that purpose, to require Grantee at Grantee's own expense to remove Grantee's Facilities to conform thereto and facilitate the same.

(3) Grantor makes no assurances that through its grant of this Franchise Agreement to Grantee that Grantor will endorse, support, or otherwise encourage approval of Grantee's 208 Plan Amendment, Certificate of Need and Necessity, permit requests, zoning, or any other approval from a governmental or regulatory agency.

C. Reservation of Rights.

(1) County reserves the right to alter and amend the Franchise at any time and in any manner necessary for the safety or welfare of the public or to protect the public interests, and County reserves the right to impose at any time restrictions and limitations upon the use of the public rights of way as County deems best for the public safety or welfare.

(2) County expressly reserves the right, after thirty (30) days written notice to Grantee, to modify, amend, alter, change or eliminate any of the provisions of the Franchise which may become obsolete or impractical; and to impose such additional conditions upon Grantee as may be just and reasonable, such conditions to be those deemed necessary for the purpose of insuring adequate service to the public; provided however, County shall not modify, amend, alter, change or eliminate any of said provisions until after thirty (30) days and a public hearing, if such is legally required or requested by Grantee.

### **Section 3: RENEWAL/SUBSEQUENT APPLICATION/REMOVAL OF SYSTEM**

A. The Franchise herein granted shall expire on September 19, 2032; and upon its termination, Grantee shall cease to exercise under the terms of the Franchise the privileges herein granted. In the event Grantee desires a renewal of the Franchise herein granted, or a new franchise for a subsequent period, Grantee shall apply to and open negotiations with County for that purpose at least six (6) months before the expiration of the Franchise herein granted; but nothing herein shall be construed to bind County to grant such renewal or subsequent franchise.

B. Upon termination of the Franchise, Grantee shall remove Grantee's Facilities from the public rights of way and within the Franchise Area and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, County may deem any property not removed as having been abandoned.

### **Section 4: REGULATION**

Grantee shall be subject to reasonable regulations for the maintenance by Grantee of such portion of the public rights of way altered, damaged or destroyed by Grantee, its agents,

employees or contractors, in exercising the privileges granted by the Franchise, including, but not limited to provisions for repair as set forth in Section 9(B) herein.

## **Section 5: CONSTRUCTION, INSTALLATION AND REPAIRS**

A. Before beginning any construction for installation of Grantee's Facilities, Grantee shall submit a plan of proposed construction to the Pinal County Engineer and shall not commence any construction until the plan of construction is approved by the County Engineer or his designate.

B. All work performed by Grantee, its agents, employees or contractors, under the Franchise shall be done in the manner prescribed by County and subject to the supervision of County, and in strict compliance with all laws, ordinances, rules and regulations of federal, state and local governments.

C. No construction, reconstruction, repair, or relocation under the Franchise shall be commenced until written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, highways, streets, or rights of way and for the proper restoration of such structures, highways, streets or rights of way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

D. No construction under the Franchise by Grantee shall impose upon County the duty to maintain any public right of way unless County accepts said public right of way into the county maintenance system as provided by law.

## **Section 6: INSPECTION**

County shall, if it deems it necessary, have the right to inspect the construction, operation and maintenance of Grantee's Facilities to insure the proper performance of the terms of the Franchise granted herein.

## **Section 7: SUFFICIENCY, LOCATION AND MAINTENANCE**

All of Grantee's Facilities shall be in all respects adequate, efficient, substantial and permanent in design and workmanship, and shall be so located, erected and maintained in good order and repair so as not to interfere with the use, enjoyment or safety of the public rights of way.

## **Section 8: EXPANSION**

Grantee may from time to time, during the term of the Franchise make such enlargements and extensions of its wastewater system as are necessary to adequately provide for the requirements of County and the inhabitants of the Franchise Area; provided that nothing herein shall compel Grantee to expand or enlarge its system beyond the economic and operating limits thereof. Such enlargements and extensions shall be made in accordance with County rules and regulations.

## **Section 9: RELOCATION; REPAIR**

A. During the term of the Franchise, if County or any qualified authority having jurisdiction in the Franchise Area alters, repairs, improves, or changes the grade of, any public rights of way in the Franchise Area, then and in such event, Grantee, at its own expense, shall promptly make such changes in the location, structure or alignment of its wastewater lines and related appurtenances as the County Engineer or his/her designee may deem necessary as provided in Section 9(B).

B. Within sixty (60) days after receiving written notice from County of needed changes or corrections in Grantee's Facilities, and upon the failure of Grantee to make such changes or corrections as set forth in Section 9(A) or to correct any damage to any public rights of way within the Franchise Area caused directly or indirectly by Grantee, its agents, employees or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Grantee. In the event that any changes, corrections or repairs are deemed an emergency by County, Grantee, upon receipt of notice of such an emergency, shall make such changes, corrections or repairs deemed necessary by County to provide for health and safety concerns. In the event that Grantee does not make the necessary changes, corrections or repairs within a reasonable period of time, County may make, or cause such changes, corrections or repairs to be made at the expense of Grantee. Any expenses incurred for such changes, corrections or repairs shall be due and payable within thirty (30) days of written demand by County to Grantee.

## **Section 10: LIABILITY**

A. If any public street, highway, alley, way, bridge, sidewalk, public place, or other public facility should be disturbed, altered, damaged or destroyed by Grantee, its agents, employees or contractors, in the construction, design, installation, operation and maintenance of Grantee's Facilities under the Franchise, the same shall be promptly repaired, reconstructed, replaced or restored by Grantee, without cost to County, as provided in Section 9(B), in as good condition as before Grantee's entry and to the satisfaction of County.

B. Grantee shall be responsible to every owner of property which shall be injured by the work of construction, installation, operation or maintenance of Grantee's Facilities

under the Franchise, all physical damage which shall be done to such injured property through any act or omission of Grantee, its agents, employees or contractors, arising out of said construction, installation, operation or maintenance.

C. It is a condition of the Franchise that County shall not and does not by reason of the Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property.

#### **Section 11: INDEMNIFICATION**

Grantee by its acceptance of the Franchise agrees that throughout the entire term of this Franchise, Grantee, at its sole cost and expense, shall indemnify, defend, save and hold harmless Pinal County, its elected officers, employees and agents from any and all lawsuits, judgments and claims for injury, death and damage to persons and property, both real and personal, caused in whole or in part by the construction, design, installation, operation or maintenance of Grantees Facilities by Grantee, its agents, employees or contractors, within the Franchise Area, to the fullest extent permitted by law. Indemnified expenses shall include, but not be limited to, litigation and arbitration expenses, and attorneys' fees.

#### **Section 12: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE FRANCHISE**

The Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty (30) days after the date this Franchise is approved by County. This Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

#### **Section 13: LIMITS ON GRANTEE'S RECOURSE**

A. Grantee by its acceptance of the Franchise acknowledges such acceptance relies upon Grantee's own investigation and understanding of the power and authority of the County to grant this Franchise. Grantee by its acceptance of the Franchise accepts the validity of the terms and conditions of the Franchise in their entirety and agrees it will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Franchise as unreasonable, arbitrary or void, or that County did not have the authority to impose such term or condition.

B. Grantee, by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein. Grantee by its acceptance of the Franchise further pledges that no promise or inducement,

oral or written, has been made to any employee or official of County regarding receipt of the Franchise.

C. Grantee, by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. The Board's decision concerning its selection and awarding of the Franchise shall be final.

#### **Section 14: FAILURE TO ENFORCE FRANCHISE**

Grantee shall not be excused from complying with any of the terms and conditions of the Franchise by any failure of County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions.

#### **Section 15: COMPLIANCE WITH THE LAW**

Grantee shall at all times, conduct its business under the Franchise in accordance with all federal, state and local laws, rules and regulations, as amended, including any future amendments thereto as may, from time to time, be adopted.

#### **Section 16: INTERPRETATION/GOVERNING LAW**

The interpretation and performance of the Franchise and of the general terms and conditions shall be in accordance with and governed by the laws of the State of Arizona.

#### **Section 17: VENUE**

Exclusive venue for any legal action to enforce the provisions, terms and conditions of the Franchise shall be the Superior Court of the State of Arizona in and for the County of Pinal, Florence, Arizona.

#### **Section 18: SEVERABILITY**

If any section, provision, term or covenant or any portion of any section, provision, term or covenant of the Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term or covenant or the remaining sections, provisions, terms or

covenants of the Franchise, all of which shall remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

#### **Section 19: FORFEITURE**

A. If Grantee fails to comply with any of the provisions of this Franchise or defaults in any of its obligations hereunder, except for causes beyond the reasonable control of Grantee; and shall fail within thirty (30) days after written notice from County to commence, and within a reasonable time and not longer than sixty (60) days, complete the correction of such default or noncompliance, County shall have the right to revoke this Franchise and all rights of Grantee hereunder. In the event Grantee makes a general assignment or general arrangement for the benefit of creditors; or a trustee or receiver is appointed to take possession of substantially all of Grantee's Facilities within the Franchise Area or of Grantee's interest in this Franchise, where possession is not restored to Grantee within thirty (30) days; or Grantee's Facilities within the Franchise Area are subject to an attachment, execution or other seizure of substantially all of the Grantee's Facilities within the Franchise Area or this Franchise, where such seizure is not discharged within thirty (30) days, County may declare this Franchise, and any expansion hereto, forfeited and terminated.

B. Nothing herein contained shall limit or restrict any other legal rights that County may possess arising from such violations.

#### **Section 20: REVOCATION OF FRANCHISE**

The Franchise may after due notice and hearing, be revoked by County for any of the following reasons:

- A. For false or misleading statements in, or material omissions from the application for and the hearing on the granting of the Franchise.
- B. For any transfer or assignment of the Franchise or control thereof without County's written consent.
- C. For failure to comply with any of the terms and conditions of the Franchise.

#### **Section 21: ASSIGNMENT/TRANSFER**

Grantee shall not assign or transfer any interest in the Franchise without the prior written consent of Grantor. Grantor shall not unreasonably withhold its consent to a proposed transfer.

## **Section 22: NOTICE**

Notices required under the Franchise shall be delivered or sent by certified mail, postage prepaid to:

Grantor:

Clerk of the Pinal County Board of Supervisors  
P.O. Box 827  
31 N. Pinal  
Florence, Arizona 85232

Grantee:

Willow Springs Utility Company, L.L.C.  
1600 East Hanley Blvd., Suite 128  
Oro Valley, AZ 85737

The delivery or mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given at the time of delivery. Either party may change its address under this section by written notice to the other party.

## **Section 23: REMEDIES**

Rights and remedies reserved to the parties by the Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of the Franchise and a waiver thereof at any time shall not affect any other reservation of rights or remedies.

## **Section 24: RIGHT OF INTERVENTION**

County hereby reserves to itself, and Grantee hereby grants to County, the right to intervene in any suit, action or proceeding involving any provision in the Franchise.

## **Section 25: BOOKS AND RECORDS**

Grantee shall maintain books and records that identify all of Grantee's underground facilities by type and location within the Franchise Area. Grantee shall make such books and records available to County upon County's request and without cost to County.



**Section 26: AD VALOREM TAXES**

Grantee shall pay its ad valorem taxes before they become delinquent.

**IN WITNESS WHEREOF**, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and caused its official seal to be affixed on 9-19, 2007.

PINAL COUNTY BOARD OF SUPERVISORS



*David Snider*

David Snider, Chairman

ATTEST:

*Sheri Cluff*

Sheri Cluff, Clerk of the Board

APPROVED AS TO FORM:

JAMES P. WALSH  
PINAL COUNTY ATTORNEY

*Rick Husk*

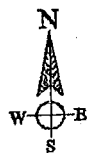
Rick Husk, Deputy County Attorney

**Exhibit A**

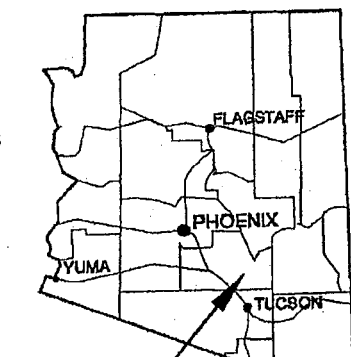
**FRANCHISE AREA:**

**Sections 8, 9, 14, 15, 22, 23, 25, 26 and 27, all within Township 8 South, Range 13 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;**

**Sections 20, 29 and 30, Township 8 South, Range 14 East, Gila and Salt River Base and Meridian, Pinal County, Arizona;**

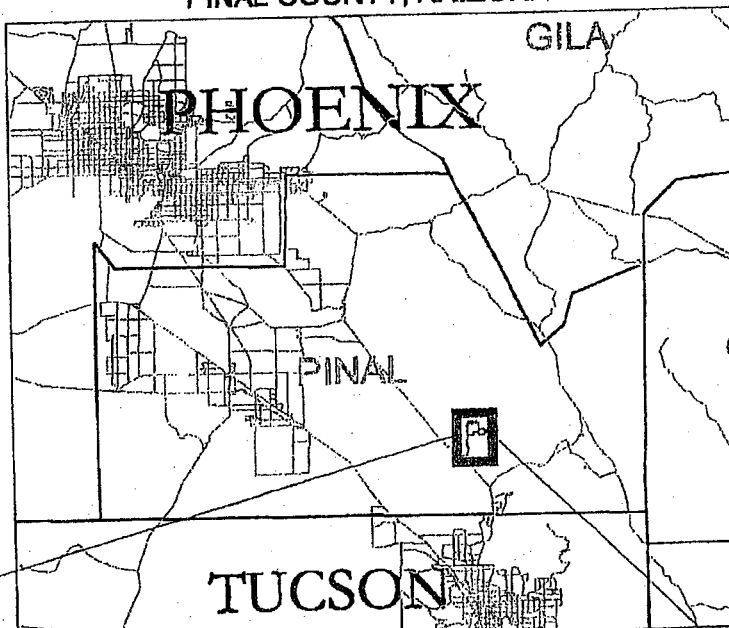


## ARIZONA

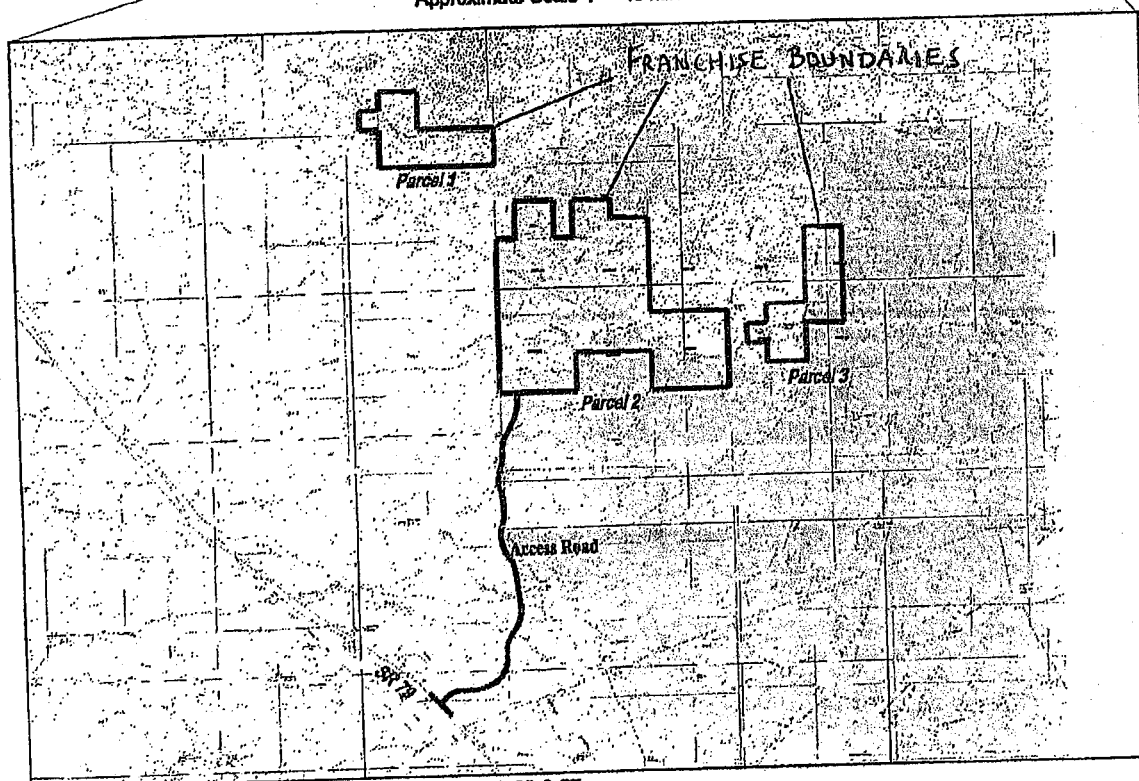


PROJECT  
LOCATION

## PINAL COUNTY, ARIZONA



Approximate Scale 1" = 10 Miles



T.8S.,R.13E. Portion Sections 8, 9, 14, 15, 22, 23, 25, 26 & 27.  
T.8S.,R.14E. Portion Sections 20, 29 & 30.  
T.9S.,R.13E. Portion of Sections 3, 4, 9, 10, 15, 19 & 21  
Fortified Peak, Chief Butte, Black Mtn. & Ninetysix Hills  
USGS 7.5 Quadrangles, Pinal County, Arizona.

WestLand Resources Inc.  
Engineering and Environmental Consultants  
2543 E. Broadway Blvd., Suite 202  
Tucson, AZ 85719 (602) 206-9585

0' 6000' 12000'  
APPROX. SCALE: 1" = 12000'

WILLOW SPRINGS PROPERTIES, L.L.C.

Willow Springs

VICINITY MAP

Figure 1

**Exhibit B**  
**ACCEPTANCE OF FRANCHISE**

To: Board of Supervisors Pinal County, Arizona

Grantee, Willow Springs Utility Company, L.L.C., an Arizona limited liability company, does hereby accept the September 19, 2007 grant of a new public utility franchise from Pinal County, Arizona, (hereinafter "Franchise"), to construct, operate, and maintain wastewater lines and related fixtures along, under and across present and future public rights of way, except state and federal highways, within the unincorporated area of Pinal County, Arizona, as stated in its application for a new public utility franchise.

Grantee unconditionally accepts the Franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of Pinal County to impose the same.

Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in this Franchise recited to have been or to be made by Grantee.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Willow Springs Utility Company, L.L.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ARIZONA       )  
                                  ) ss.  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_, \_\_\_\_\_ of Willow Springs Utility Company, LLC, an Arizona limited liability company, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



OFFICIAL RECORDS OF  
PINAL COUNTY RECORDER  
LAURA DEAN-LYTL

When recorded mail to:

Clerk of the Board Office  
P.O. Box 827  
Florence, Arizona 85232

DATE/TIME: 11/01/07 1234

FEE: \$0.00

PAGES: 2

FEE NUMBER: 2007-121688

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(The above space reserved for recording information)

**CAPTION HEADING**

Acceptance form from Willow Springs Utility Company, L.L.C. for wastewater utility franchise.

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**DO NOT DISCARD THIS PAGE.** THIS COVER PAGE IS RECORDED AS PART OF YOUR DOCUMENT.  
THE CERTIFICATE OF RECORDATION WITH THE FEE NUMBER IN THE UPPER RIGHT HAND CORNER  
IS THE PERMANENT REFERENCE NUMBER OF THIS DOCUMENT IN THE PINAL COUNTY  
RECORDER'S OFFICE.

## ACCEPTANCE OF FRANCHISE

To: Board of Supervisors Pinal County, Arizona

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Grantee declares that the statements and recitals in this Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in this Franchise recited to have been or to be made by Grantee.

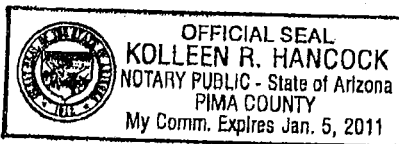
Dated this 25<sup>th</sup> day of September, 2007.

Willow Springs Utility Company, L.L.C.

By: Kevin T. Taylor

Title: General Manager

STATE OF ARIZONA )  
County of Pima ) ss.



The foregoing instrument was acknowledged before me this 25 day of September 2007, by Kevin T. Taylor General Manager of Willow Springs Utility Company, LLC, an Arizona limited liability company, and being authorized to do so, executed the foregoing instrument on behalf of the company for the purposes therein stated.

Kolleen R. Hancock  
Notary Public

My Commission Expires:

1/5/2011